



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

January 24, 2003

Mr. Miles J. LeBlanc  
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Houston, Texas 77204-2162

OR2003-0507

Dear Mr. LeBlanc:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175499.

The Board of Regents of the University of Houston (the "university") received a request for eighteen categories of information related to the search for and selection of the current university system chancellor. You state that some of the requested documents are not in the university's possession or do not exist.<sup>1</sup> You inform us that some responsive information is being made available to the requestor. You claim that portions of the remaining requested information are excepted from disclosure under section 552.123 of the Government Code, and may be excepted under sections 552.101 and 552.110. Pursuant to section 552.305, you indicate that you notified Korn/Ferry International ("Korn"), the party with a proprietary interest in the information, of the request for information and of its right to submit arguments to this office as to why the requested information should not be released. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits

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<sup>1</sup>The Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received, nor does it require a governmental body to prepare new information in response to a request. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Attorney General Opinion H-90 (1973); Open Records Decision Nos. 452 at 2-3 (1986), 342 at 3 (1982), 87 (1975); *see also* Open Records Decision Nos. 572 at 1 (1990), 555 at 1-2 (1990), 416 at 5 (1984).

governmental body to rely on interested third party to raise and explain applicability of exception in Act in certain circumstances). We have considered the claimed exceptions and reviewed the submitted information.

Section 552.305(d) allows a third party ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). No response was received from Korn. Because the interested third party did not submit arguments in response to the section 552.305 notice, the third party has provided us with no basis to conclude that the information at issue is excepted from disclosure under sections 552.101 or 552.110. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 542 at 3 (1990). Therefore, we will address the university's arguments against disclosure of the information at issue.

Section 552.123 of the Government Code excepts from required public disclosure:

The name of an applicant for the position of chief executive officer of an institution of higher education . . . except that the governing body of the institution must give public notice of the name or names of the finalists being considered for the position at least 21 days before the date of the meeting at which final action or vote is to be taken on the employment of the person.

Gov't Code § 552.123. Section 552.123 permits the withholding of any identifying information about candidates, not just their names. Open Records Decision No. 540 (1990) (construing statutory predecessor to section 552.123). Examples of information identifying individuals might include, but are not limited to, resumes, professional qualifications, membership in professional organizations, dates of birth, current positions, publications, letters of recommendation, or any other information that can be uniquely associated with a particular applicant. *Id.* at 4. In addition, the exception protects the identities of all persons being considered for the position of university chief executive officer, whether they apply on their own initiative or they are nominated. *Id.* at 5.

The university is an "institution of higher education" as defined by section 61.003(8) of the Texas Education Code. Section 61.003(8) of the Education Code defines an institution of higher education as "any public technical institute, public junior college, public senior college or university, medical or dental unit, public state college, or other agency of higher education as defined in this section." Educ. Code § 61.003(8). You state that the search for and appointment of a Chancellor is complete. Additionally, you inform us that the identity of the finalist was disclosed pursuant to the 21-day notice requirement of section 552.123. Based on your representations and our review of the information, we conclude that the

university may withhold the identifying information of the applicants who were not finalists under section 552.123 of the Government Code.

We note that section 552.117 may also be applicable to some of the submitted information pertaining to the finalist. Section 552.117 excepts from disclosure the home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request for it is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the university may only withhold information under section 552.117 on behalf of current or former officials or employees who made a request for confidentiality under section 552.024 prior to the date on which the request for this information was made. If the chancellor timely elected to keep his personal information confidential, the university must withhold his home address and telephone number, social security number, and any information that reveals whether he has family members. The university may not withhold this information under section 552.117 if the chancellor did not make a timely election to keep the information confidential.

In sum, the university may withhold the identifying information of the applicants who were not finalists under section 552.123 of the Government Code. If the chancellor timely elected to keep his personal information confidential, the university must withhold the chancellor's home address and telephone number, social security number, and any information that reveals whether he has family members under section 552.117. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

Ref: ID# 175499

Enc. Submitted documents

c: Mr. Jim Thompson, GySgt  
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